# HOUSE . . . . . No. 2059

By Representative Canavan of Brockton and Senator Pacheco, joint petition of Christine E. Canavan and others relative to the establishment of a nursing advisory board within the Executive Office of Health and Human Services. Public Health.

## The Commonwealth of Massachusetts

PETITION OF:

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In the Year Two Thousand and Seven.

AN ACT RELATIVE TO PATIENT SAFETY.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Chapter 6A of the General Laws is hereby amended by inserting after section 16G the following section:—

Section 16H. A nursing advisory board is hereby established within, but not subject to the control of, the executive office of health and human services. The advisory board shall consist of 8 members who shall have a demonstrated background in nursing or health services research and who shall represent the continuum of health care settings and services, including, but not limited to, long-term institutional care, acute care, community-based care, public health, school care, and higher education in nursing. The members shall be appointed by the governor from a list of 10 individuals recommended by the board of registration in nursing and a list of 10 persons recommended by the Massachusetts Center for Nursing, Inc. The advisory board shall elect a chair from among its members and adopt bylaws for its proceedings. Members shall be appointed for staggered terms of 3 years, except for persons appointed to fill vacancies who shall serve for the unexpired term. No member shall serve more than 2 consecutive full terms.

The advisory board shall:—

(a) advise the governor and the general court on matters related to the practice of nursing, including the shortage of nurses across the commonwealth in all settings and services, including long-term institutional care, acute care, community-based care, public health, school care, and higher education in nursing;

(b) develop a research agenda, apply for federal and private research grants, and commission and fund research projects to fulfill the agenda;

(c) recommend policy initiatives to the governor and the general court;

(d) prepare an annual report and disseminate the report to the governor, the general court, the secretary of health and human services, the director of labor and workforce development and the commissioner of public health; and

(e) consider the use of current government resources, including, but not limited to the Workforce Training Fund.

Any funds granted to the advisory board shall be deposited with the state treasurer and may be expended by the advisory board in accordance with the conditions of the grants, without specific appropriation. The advisory board may expend for services and other expenses any amounts that the general court may appropriate therefore. Said advisory board shall conduct at least 1 public hearing during each year. The executive office of health and human services shall establish, operate, and manage the advisory board.

SECTION 2. Section 14 of chapter 13 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following clause:—

(l) establish an expert nursing corps, to be known as the Clara Barton expert nursing corps, which shall consist of recognized nurses of high achievement in the profession who shall mentor incoming or novice nurses and further the goals of the nursing profession. The board shall adopt guidelines governing the implementation of the program. Such guidelines shall include, but not be limited to, the following provisions: specialty, standing, experience, and successful efforts to enable the nursing profession.

SECTION 3. Chapter 15A of the General Laws is hereby amended by inserting after section 15G the following section:—-

Section 15H. Notwithstanding the provisions of any general or special law to the contrary, any state or community college, or the University of Massachusetts may enter into employment contracts

for a minimum period of 5 years with faculty members who teach nursing at such institutions, unless both parties agree to a shorter term of employment. For the purpose of this section in order to preserve the public's health and safety any nursing faculty positions made vacant by the retirement of any employee receiving benefits in accordance with this section shall be deemed a position of critical and essential nature and shall be included on the schedule provided by the board of higher education to the house and senate committee on ways and means as set forth in this section.

SECTION 4. Chapter 15A of the General Laws is hereby amended by inserting after section 19E the following 6 sections:—

Section 19F. The board of higher education shall establish a student loan repayment program and a faculty position payment program, for the purpose of encouraging outstanding students to work in the profession of nursing or for existing nurses or nurse student graduates to teach nursing within the commonwealth by providing financial assistance for the repayment of qualified education loans or by providing compensation to health care facilities to cover nurse scheduled work time spent teaching.

The faculty position payment program shall provide a dollar-for-dollar match for any funds committed by a hospital to pay for nurse faculty positions in publicly funded schools of nursing, including the costs of providing hospital personnel loaned to said schools of nursing. The board of higher education shall adopt guidelines governing the implementation of the program, which shall include, but not be limited to, eligibility, repayment schedules and fair practice measures.

Section 19G. The board of higher education shall establish a scholarship program to provide students in approved Massachusetts colleges, universities and schools of nursing with scholarships for tuition and fees for the purpose of encouraging outstanding Massachusetts students to work as nurses in, but not limited to, acute care hospitals, psychiatric and mental health clinics or hospitals, community or neighborhood health centers, rehabilitation centers, nursing homes, or as a home health, school

or public health nurses in the commonwealth, or to teach nursing in colleges, universities, or schools of nursing in the commonwealth. The board of higher education shall adopt guidelines governing the implementation of the scholarship program.

Colleges, universities, and schools of nursing in the commonwealth may administer the Clara Barton scholarship program and select recipients in accordance with guidelines adopted by the board. Scholarships may be made available to full or part time matriculating students in courses of study leading to a degree in nursing or the teaching of nursing. The criteria of the recipients and the amount of the scholarships shall be determined by the board of higher education.

Section 19H. The board of higher education shall appropriate a portion of the Clara Barton Nursing Excellence Trust Fund, established in section 2SSS of chapter 29, to be used for the provision of refresher courses and retraining for licensed registered nurses returning to bedside care. Said funds shall be used for registered nurses attending refresher classes at accredited schools of nursing.

Section 19I. The board of higher education shall develop a program to increase the racial and ethnic diversity of the nursing workforce. Such programs shall focus on the identification, recruitment and retention of nursing students from populations underrepresented in the health care professions. Said programs shall pay special attention to economic, social, and educational barriers for the diversification of the nursing workforce.

SECTION 5. Chapter 29 of the General Laws is hereby amended by inserting after section 2RRR, inserted by section 8 of chapter 58 of the acts of 2006, the following section:—

Section 2SSS. There is hereby established and set up on the books of the commonwealth a separate fund, to be known as the Clara Barton Nursing Excellence Trust Fund. There shall be credited to the fund all revenues from public, subject to appropriation, and private sources as appropriations, gifts, grants, donations, and from the federal government as reimbursements, grants-in-aid or other receipts to further the purposes of the fund in accordance with sections 19F to 19K, inclusive, of chapter 15A, and any interest or investment earnings on such revenues. All revenues credited to the fund shall remain in the fund and shall be

expended, without further appropriation, for applications pursuant to said sections 19F to 19K, inclusive. The state treasurer shall deposit and invest monies in said fund in accordance with sections 34, 34A and 38 in such a manner as to secure the highest rate of return consistent with the safety of the fund. The fund shall be expended only for the purposes stated in said sections 19F to19K, inclusive, at the direction of the chancellor of the system of public higher education, established in section 6 of chapter 15A.

On February 1 of each year, the state treasurer shall notify the advisory board of any projected interest and investment earnings available for expenditure from said fund for each fiscal year.

SECTION 6. Chapter 111 of the General Laws is hereby amended by adding the following 7 sections:—

Section 220. As used in sections 220 to 227, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:—

"Adjustment of standards", the adjustment of nurse's patient assignment standards in accordance with patient acuity according to, or in addition to, direct-care registered nurse staffing levels determined by the nurse manager, , using the patient acuity system developed by the department and any alternative patient acuity system utilized by hospitals, if said system is certified by the department.

"Acuity", the intensity of nursing care required to meet the needs of a patient; higher acuity usually requires longer and more frequent nurse visits and more supplies and equipment.

"Assignment", the provision of care to a particular patient for which a direct-care registered nurse has responsibility within his scope of practice, notwithstanding the provisions of any general or special law to the contrary.

"Assist", patient care that a direct-care registered nurse may provide beyond his patient assignments if the tasks performed are specific and time-limited.

"Board", the board of registration in nursing

"Circulator", a direct-care registered nurse devoted to tracking key activities in the operating room.

'Department', the department of public health.

"Direct-care registered nurse", a registered nurse who has accepted direct responsibility and accountability to carry out medical regimens, nursing or other bedside care for patients.

"Facility", a hospital licensed under section 51, the teaching hospital of the University of Massachusetts medical school, any licensed private or state-owned and state-operated general acute care hospital, an acute psychiatric hospital, an acute care specialty hospital, or any acute care unit within a state-operated facility as defined in 105 CMR 100.020. As used in sections 220 to 227, inclusive, this definition is not intended to include rehabilitation facilities or long-term acute care facilities.

"Float nurse", a direct-care registered nurse that has demonstrated competence in any clinical area that he may be requested to work and is not assigned to a particular unit in a facility.

"Mandatory overtime", any employer request with respect to overtime, which, if refused or declined by the employee, may result in an adverse employment consequence to the employee. The term overtime with respect to an employee, means any hours that exceed the predetermined number of hours that the employer and employee have agreed that the employee would work during the shift or week involved.

"Monitor in moderate sedation cases", a direct-care registered nurse devoted to continuously monitoring his patient's vital statistics and other critical symptoms.

"Nonassigned registered nurse", includes, but not limited to, any nurse administrator, nurse supervisor, nurse manager, or charge nurse that maintains his registered nurse licensing certification but is not assigned to a patient for direct care duties.

"Nurse manager", the registered nurse, , whose tasks include, but not be limited to, assigning registered nurses to specific patients within the scope of minimum accepted levels of care consistent with professional standards and as defined in section 80B of chapter 112.

"Nurse's patient assignment standard", the number of patients to be assigned to each direct-care registered nurse at one time on a particular unit that will promote equal, high-quality, and safe patient care at all facilities.

"Nurse's patient limit", the maximum number of patients to be assigned to each direct-care registered nurse at one time on a particular unit in ensure safe patient care.

"Nursing care", care which falls within the scope of practice as defined in section 80B of chapter 112 or otherwise encompassed within recognized professional standards of nursing practice, including assessment, nursing diagnosis, planning, intervention, evaluation and patient advocacy.

"Overwhelming patient influx", an unpredictable or unavoidable occurrence at unscheduled or unpredictable intervals that causes a substantial increase in the number of patients requiring emergent and immediate medical interventions and care, such as a declared national or state emergency, or the activation of the health care facility disaster diversion plan to protect the public health or safety.

"Patient acuity system", a measurement system that is based on scientific data and compares the registered nurse staffing level in each patient care unit against actual patient nursing care requirements of each patient in order to predict registered nursing direct-care requirements for individual patients based on severity of patient illness..

"Teaching hospital", a facility as defined by the Medicare Payment Advisory Commission as a hospital with at least 25 medical residents per 100 hospital beds, as reported to the division of healthcare quality and finance.

Section 221. The department shall reevaluate the numbers that comprise the nurse's patient assignment standards and nurse's patient limits in the evaluation period and then every 3 years thereafter taking into consideration evolving technology or changing treatment protocols and care practices and other relevant clinical factors.

Section 222. (a) The department shall develop nurse's patient assignment standards which will be an number of patients assigned to a direct-care registered nurse that will promote equal, high-quality, patient care at all facilities. The number of patients assigned to each direct-care registered nurse shall not be averaged. The nurse's patient assignment standards shall not refer to a total number of patients and a total number of direct-care registered nurses on a unit and shall not be factored over a period of time. The standards shall form the basis of nurse staffing plans as set forth in section 224.

(b) The department shall develop nurse's patient limits which represent the maximum number of patients to be safely assigned to each direct-care registered nurse at one time on a particular unit. The number of patients assigned to each direct-care registered nurse shall not be averaged and each limit shall pertain to only one direct-care registered nurse. Nurse's patient limits shall not refer to a total number of patients and a total number of direct-care registered nurses on a unit and shall not be factored over a period of time. A facility's failure to adhere to these nurse's patient limits shall result in non-compliance with this section and be subject to the enforcement procedures outlined herein and section 227.

(c) The department shall use at least the following information to develop nurse's patient assignment standards and nurse's patient limits for all facilities:—

(1) Massachusetts specific data, including, but not limited to, the role of registered nurses in the commonwealth by type of unit, the current staffing plans of facilities, the relative experience and education of registered nurses, the variability of facilities, and the needs of the patient population;

(2) professional standards of care promulgated by nursing specialty organizations;

(3) fluctuating patient acuity levels;

(4) variations among facilities and patient care units;

(5) scientific data related to patient outcomes,

(6) facility medical error rates, and health care quality measures including but not limited to: infection rates, patient falls, failure to rescue, skin ulcers, medication errors and sepsis;

(7) availability of technology;

(8) treatment modalities within behavioral health facilities;

(9) and public testimony from the public and experts in the field.

(d) The setting of nurse's patient assignment standards and nurse's patient limits for registered nurses is not to be interpreted as justifying the understaffing of other critical health care workers, including licensed practical nurses and unlicensed assistive personnel. The availability of these other health care workers enables registered nurses to focus on the nursing care functions that only registered nurses, by law, are permitted to perform and thereby helps to ensure adequate staffing levels.

(e) Nurse's patient assignment standards and nurse's patient limits shall be determined for the following departments, units or types of nursing care:— intensive care units, (a) critical patient(s) (b) critical unstable patient(s); critical care units, (a) critical patient(s) (b) critical unstable patient(s); neo-natal intensive care (a) critical patient(s) (b) critical unstable patient(s); burn units (a) critical patient(s) (b) critical unstable patient(s); step-down/intermediate care; operating rooms, (a) not to include a registered nurse working as a circulator (b) to be determined for registered nurse working as a monitor in moderate sedation cases; post anesthesia care with the patient remaining under anesthesia; post-anesthesia care with the patient in a post-anesthesia state; emergency department overall; emergency critical care, provided that the triage, radio or other specialty registered nurse is not included; emergency trauma; labor and delivery with separate standards for (i) a patient in active labor, (ii) patients, or couplets, in immediate postpartum, and (iii) patients, or couplets, in postpartum; intermediate care nurseries; well-baby nurseries; pediatric units; psychiatric units; medical and surgical; telemetry; observational/out-patient treatment; transitional care; acute inpatient rehabilitation; specialty care unit; and any other units or types of care determined necessary by the department.

(f) The department shall jointly, with the department of mental health, develop nurse's patient assignment standards and nurse's patient limits in acute psychiatric care units..

(g) Nothing in this section shall exempt a facility that identifies a unit by a name or term other than those used in this section, from complying with the nurse's patient assignment standards and nurse's patient limits and other provisions established in this section for care specific to the types of units listed.

Section 223. (a) The department shall develop a patient acuity system, as defined in section 22C. The department may also certify patient acuity systems developed or utilized by facilities. Said systems must include the standardized criteria determined by the department. The patient acuity shall be used by facilities to:—

(1) assess the acuity of individual patients and assign a value, within a numerical scale, to each individual patient;

(2) establish a methodology for aggregating patient acuity;

(3) monitor and address the fluctuating level of acuity of each patient; and

(4) supplement the nurse's patient assignments and indicate the need for adjustment of direct-care registered nurse staffing as patient acuity changes.

(b) The patient acuity system designed by the department or other patient acuity system used by a facility and certified by the department shall be used in determining adjustments in the number of direct-care registered nurses due to the following factors:—

(1) the need for specialized equipment and technology;

(2) the intensity of nursing interventions required and the complexity of clinical nursing judgment needed to design, implement and evaluate the patient's nursing care plan consistent with professional standards of care;

(3) the amount of nursing care needed, both in number of direct-care registered nurses and skill mix of nursing personnel required on a daily basis for each patient in a nursing department or unit, the proximity of patients, the proximity and availability of other resources, facility design, and personnel that have an effect upon the delivery of quality patient care;

(4) appropriate terms and language that are readily used and understood by direct-care registered nurses; and

(5) patient care services provided by registered nurses and licensed practical nurses and other health care personnel.

(c) The patient acuity system shall include a method by which facilities will adjust a nurse's patient assignments within the nurse's patient standards and the nurse's patient limits, as determined by the department.

(1) A nurse manager shall adjust the patient assignments according to the patient acuity system.

(2) At any time, any registered nurse can assess the accuracy of the patient acuity system as applied to a patient in his care.

(d) Nothing contained in this section shall supersede or replace any requirements otherwise mandated by law, regulation or collective bargaining contract so long as the facility meets the requirements determined by the department.

Section 224. As a condition of licensing by the department each facility shall submit annually to the department a prospective

staffing plan with a written certification that the staffing plan is sufficient to provide adequate and appropriate delivery of health care services to patients for the ensuing year. A staffing plan shall:—

(1) incorporate information regarding the amount of licensed beds and critical technical equipment associated with each bed in the entire facility;

(2) adhere to the nurse's patient assignment standards;

(3) employ the department developed or facility developed or any alternative patient acuity system developed or utilized by a facility and certified by the department when addressing fluctuations in patient acuity levels that may require adjustments in registered nurse staffing levels as determined by the department;

(4) provide for orientation of registered nursing staff to assigned clinical practice areas, including temporary assignments;

(5) include other unit or department activity such as discharges, transfers and admissions, and administrative and support tasks that are expected to be done by direct-care registered nurses in addition to direct nursing care;

(6) include written reports of the facility's patient aggregate outcome data; and

(7) incorporate the assessment criteria used to validate the acuity system relied upon in the plan.

As a condition of licensing, each facility shall submit annually to the department an audit of the preceding year's staffing plan. The audit shall compare the staffing plan with measurements of actual staffing as well as measurements of actual acuity for all units within the facility assessed through the patient acuity system.

Section 225. (a) At the beginning of his shift, a direct-care registered nurse will be assigned, in a manner consistent with section 80B of chapter 112, a certain patient or patients by his nurse manager, who shall use his professional judgment in so assigning, provided that the number of patients so assigned shall not exceed the nurse's patient limit associated with his unit.

(b) A nonassigned registered nurse may be included in the counting of the nurse to patient assignment standards/nurse's patient limits only when that non-assigned registered nurse is providing direct care. When a nonassigned registered nurse is

engaged in activities other than direct patient care, that nurse shall not be included in the counting of the nurse to patient assignments. Only a nonassigned registered nurse, who has demonstrated current competence to the facility to provide the level of care specific to the unit to which the patient is admitted, may relieve a direct-care registered nurse from said unit during breaks, meals, and other routine and expected absences.

(c) Nothing in this section shall prohibit a direct-care registered nurse from assisting with specific tasks within the scope of his practice for a patient assigned to another nurse.

(d) Each facility shall plan for routine fluctuations in patient census. In the event of an overwhelming patient influx, said facility must demonstrate that prompt efforts were made to maintain required staffing levels during said influx and that mandated limits were reestablished as soon as possible and no longer than a total of 48 hours after termination of said event unless approved by the department.

(e) For the purposes of complying with the requirements set forth in this section, except in cases of federal or state government declared public emergencies, no facility may employ mandatory overtime.

Section 226. (a) No facility shall directly assign any unlicensed personnel to perform nondelegatable licensed nurse functions to replace care delivered by a licensed registered nurse. Unlicensed personnel are prohibited from performing functions which require the clinical assessment, judgment and skill of a licensed registered nurse. Such functions shall include, but not be limited to:—

(1) nursing activities which require nursing assessment and judgment during implementation;

(2) physical, psychological, and social assessment which requires nursing judgment, intervention, referral or follow-up;

(3) formulation of the plan of nursing care and evaluation of the patient's response to the care provided;

(4) administration of medications,

(5) health teaching and health counseling.

(b) For purposes of compliance with this section, no registered nurse shall be assigned to a unit or a clinical area within a facility unless said registered nurse has an appropriate orientation in said clinical area sufficient to provide competent nursing care and has

demonstrated current competency levels through accredited institutions and other continuing education providers.

Section 227. (a) As a condition of licensing, a facility required to have a staffing plan under this section shall make available daily on each unit the written nurse staffing plan to reflect the nurse's patient assignment standard and the nurse's patient limit as a means of consumer information and protection.

(b) The department shall enforce the paragraphs (1) to (6), inclusive, as follows:

(1) If the department determines that there is an apparent pattern of failure by a facility to maintain or adhere to nurse's patient limits in accordance with sections 220 to 226, inclusive, any such facility may be subject to an inquiry by the department to determine the causes of the apparent pattern. If after such inquiry, the department determines that an official investigation is appropriate, the department shall conduct an investigation. Upon completion of the investigation and a finding of noncompliance, the department shall give formal written notification to the facility as to the manner in which the facility failed to comply with the nurse's patient limits. Facilities shall be granted due process during the investigation which shall include the following:—

(a) notice shall be granted to facilities that are noncompliant with nurse's patient limits;

(b) facilities shall be afforded the opportunity to submit to the department, through written clarification, justifications for failure to comply with nurse's patient limits, if so determined by said department, including, but not limited to, patient outcome data,, and other resources and personnel available to support the registered nurse and patients in the unit provided however that facilities shall bear the burden proof for any and all justification submitted to the department.

(c) based upon such justifications, the department may determine any corrective measures to be taken, if any. Such measures may include:—

(i) an official notice of failure to comply;

(ii) the imposition of additional reporting and monitoring requirements;

(iii) revocation of said facility's license or registration; and

(iv) the closing of the particular unit that is noncompliant.

(2) Failure to comply with limit nurse staffing requirements shall be considered prima facie evidence of noncompliance with this section

(3) Failure to comply with the provisions of this section is actionable.

(4) Should the department issue an official notice of failure to comply as set forth in paragraph (1) of subsection (c ) and subclause (i) of clause (c ) of said paragraph (1) following submission to and adjudication by the department of justifications for failure to comply submitted by a facility pursuant to clause (b) of paragraph (1) of said subsection (c) to a facility found in noncompliance with limits, the facility must prominently post its notice within each noncompliant unit. Copies of the notice shall be posted by the facility immediately upon receipt and maintained for 14 consecutive days in conspicuous places including all places where notices to employees are customarily posted. The department will post said notices on its website immediately after a finding of noncompliance. The notice shall remain on the department's website for 14 consecutive days or until such noncompliance is rectified, whichever is greater.

(5) If a facility is repeatedly found in noncompliance based on a pattern of failure to comply as determined by the department, the commissioner may fine the facility an amount not more than $10,000 for each finding of noncompliance.

(6) Any facility may appeal any measure or fine sought to be enforced by the department hereunder to the division of administrative law appeals and any such measure or fine shall not be so enforced by said department until final adjudication by said division.

(7) The department is authorized to promulgate rules and regulations necessary to enforce this section.

(c) If a facility can reasonably demonstrate to the department, with sufficient documentation as determined by "financially distressed provider" criteria promulgated by the division of health care finance and policy, extreme financial hardship as a consequence of meeting the requirements set forth in this section, then the facility may apply to the department for a waiver of up to 6 months.

SECTION 7. The department of public health shall submit 2 written reports on its progress in carrying out this act. Said department shall report to the general court the results of its 2 written reports to the clerks of the senate and house of representatives who shall forward the same to the president of the senate, the speaker of the house of representatives and the chairs of the joint committee on public health. The first report shall be filed on or before March 1, 2008 and the second report shall be filed on or before December 1, 2009.

SECTION 8. The evaluation period to reevaluate the numbers that comprise the nurse's patient assignment standards and nurse's patient limits shall be January of 2013.

SECTION 9. The executive office of economic development, in collaboration with the board of education, the board of higher education, the board of registration in nursing, the Massachusetts Nurses Association, the Massachusetts Hospital Association, Inc., the Massachusetts Organization of Nurse Executives Inc., and any other entity deemed relevant by the department, shall develop a comprehensive statewide plan to promote the nursing profession. The plan shall include specific recommendations to increase interest in the nursing profession and increase the supply of registered nurses in the workforce, including recommendations that may be carried out by state agencies. The plan shall be filed with the clerks of the senate and the house of representatives, who shall forward the same to the speaker of the house of representatives and the president of the senate on or before April 15, 2010.

SECTION 10. Teaching hospitals shall meet the applicable requirements in this act on or before October 1, 2009 and all other facilities shall meet the applicable requirements in this act no later than October 1, 2011.

SECTION 11. The department of public health shall, on or before January, 1, 2008, develop regulations defining criteria and prescribing the process for establishing or certifying by the department a standardized patient acuity system, as defined in section 220, developed or utilized by a facility.

SECTION 12. The department of public health shall, on or before March 1, 2008, develop a standardized patient acuity system or certify a facility developed or utilized patient acuity systems, as defined in this section, to be utilized by all facilities to monitor the number of direct-care registered nurses needed to meet patient acuity level.

SECTION 13. The department of public health shall, on or before June 1, 2008, establish, but not before the development or certification of standardized patient acuity systems, nurse's patient assignment standards and nurse's patient limits as defined in section 6, subsection 222 .

SECTION 14. The department of public health shall, on or before June 1, 2008, develop regulations providing for an accessible and confidential system to report any failure to comply with requirements of this section and public access to information regarding reports of inspections, results, deficiencies and corrections under this section unless such information is restricted by law or regulation. Any person who makes such a report shall identify themselves and substantiate the basis for the report; provided, however, that the identity of said person shall be kept confidential by the department."